junction denied. *United Drug Co.* v. *Theodore Rectanus Co.*, (Dec. 1918) 39 Sup. Ct. Rep. 48.

It was settled that complainant had been the first to use "Rex" as a trade-mark, but that defendant adopted it in ignorance of complainant's use. The patentee of an invention can restrain others from using his invention regardless of his own use or neglect to use. *Continental Paper Bag Co.* v. *Eastern etc. Co.*, 210 U. S. 405. The fact that the infringer of a patent monopoly believed himself to be the originator of the idea (*U. S.* v. *Berdam Co.*, 156 U. S. 552, 566) or that he did not know the idea was patented, is immaterial. *Royer* v. *Coupe*, 29 Fed. 358. Complainant contended that the first originator of a trade-mark is entitled to its exclusive use wherever his business comes into competition with others, citing *Columbia Mill Co.* v. *Alcorn*, 150 U. S. 460, *et al.* The gist of the decision in the principal case was, that adoption of a trade-mark secures no monopoly whatever, but merely creates a right in respect to a business; that where there is no business there is no right and that defendant, having first built up the business to which the right appertained in the particular locality, had the prior right in that locality. It seems settled that there must be an actual use of the trade-mark to give any right to it. HOPKINS ON TRADE-MARKS, sec. 29. That territorial rights, as between originating claimants, depend on actual territorial use is supported by *Hanover Milling Co.* v. *Metcalf*, 240 U. S. 403, 415; *Gorham Mfg. Co.* v. *Weintraub*, 196 Fed. 957.

VENUE OF ACTIONS—LOCAL ACTIONS AGAINST MUNICIPAL CORPORATIONS.—Two counties, King and Pierce, undertook the improvement of a river, and by reason of their alleged negligence the property of a riparian owner in Pierce county was injured. The owner sued both counties in the court of Pierce county. *Held*, on objection by King county, that the action was brought in the proper place. *State ex rel* v. *Superior Court* (Wash. 1918), 176 Pac. Rep. 352.

The question was one of precedence between two rules, (1) that a municipal corporation must be sued in its own courts, and (2) that a local action must be brought where the wrongful act takes place. Here King county was being sued in Pierce county for a trespass to real property which occurred in the county of venue. The court held that a general rule of venue should be deemed to apply to municipal corporations as well as individuals unless they were expressly excepted. The statute fixing the venue for trespass to real property did not except counties, hence they were like individuals subject to suit where the injury took place.

This is the general rule. In *McBane* v. *People*, 50 Ill. 506, a general statute on change of venue was held to authorize carrying an action out of the defendant county, notwithstanding that by the terms of a special statute it could have been commenced only in the defendant's courts. In *Clarke* v. *Lyons County*, 8 Nev. 181, a general statute authorizing trial in a wrong venue where timely objections were not taken, was held to apply to counties. In *Baltimore City* v. *Turnpike Company*, 104 Md. 351, an action for trespass committed by a city upon land outside the city was held properly brought in

the jurisdiction where the land was located. The rule exemplified in these cases offers an interesting illustration of the strength of the local venue tradition of the common law,—a tradition which Lord Mansfield unsuccessfully tried to revise upon the principle that only proceedings *in rem* were essentially local. *Mostyn* v. *Fabrigas,* 1 Cowp. 161; Erskine's argument in *Doulson* v. *Matthews,* 4 T. R. 503. An action against a county of one State brought in the courts of another State, where the process of attachment is available would seem to present no difficulty. *Van Horn* v. *Kittitas County,* 28 Misc. (N. Y.) 333, affirmed, 46 N. Y. App. Div. 623.

WILLS—EXECUTORY DEVISE—REPUGNANCY—FAILURE OF PRECEDING INTEREST.—Testatrix by will gave her freeholds absolutely to A. "subject to the following bequests. * * * Secondly I desire that after my executor's (A's) death whatever of my freehold properties shall remain shall be given to" a named charity. *Held,* that if A had survived the testatrix the gift to the charity would have been repugnant and void and that A would have taken absolutely, but that, A having died in the lifetime of the testatrix, the doctrine of repugnancy did not apply, and the gift to the charity was accelerated and took effect. *In re Dunstan. Dunstan* v. *Dunstan,* [1918] 2 Ch. 304.

Where property is given by will to a devisee absolutely, any further disposition of such property is generally ineffective. A provision that if the first taker does not give the property away in his life-time or dispose of it by will, it shall not go to his heir-at-law or personal representative is repugnant and void; for what is once vested absolutely in a man cannot be taken from him out of the course of devolution at his death by any expression or wish on the part of the testator. It may happen, however, that the original gift never takes effect,—e. g., through the death of the devisee or legatee in the lifetime of the testator. The older cases made no exception in this situation. In 1855 Sir John Romilly, M. R., held that an executory bequest over in defeasance of a previous absolute bequest of personalty failed although the first legatee predeceased the testator. *Hughes* v. *Ellis,* 20 Beav. 193. The same view had been taken in *Andrew* v. *Andrew,* (1845) 1 Coll. 686 (consumable articles), and *Harris* v. *Davis* (1844) 1 Coll. 416, 9 Jur. 269; *Hughes* v. *Ellis* was followed in *Greated* v. *Greated* (1859) 26 Beav. 621. These cases were deservedly criticised by James, L. J., in *In re Stringer's Estate* (1877) 6 Ch. Div. 1, 14-15. As Justice James said, it is difficult to see why this principle should apply to a case "where the original gift never did take effect at all, because there is no repugnance. There may be repugnance between the gift over and the gift intended to be made, but I am not quite sure that that ought to be applied to a case, supposing the point arose, where there was simply the death of the person creating a lapse." So far as bequests of personalty are concerned, the modern doctrine was established in *In re Lowman* [1895] 2 Ch. 348. Lindley, L. J., said: " * * * where there are successive limitations of personal estate in favour of several persons absolutely, the first of them who survives the testator takes absolutely, although he would have taken nothing if any other legatee had survived and taken; or in other words, in the case supposed